

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

|   |   |                             |
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| TASER INTERNATIONAL, INC., <i>et al.</i> ,  | ) |                             |
|   | ) |                             |
| Plaintiffs,                                 | ) | Case No.: 1:10-CV-03108-JEC |
|   | ) |                             |
| v.  | ) | [On removal from the State  |
|   | ) | Court of Fulton County,     |
| MORGAN STANLEY & CO., INC., <i>et al.</i> , | ) | Georgia Case No.:           |
|   | ) | 2008-EV-004739-B]           |
| Defendants.                                 | ) |                             |
|   | ) |                             |
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**MOTION FOR PERMISSION TO EXCEED PAGE LIMITATIONS IN  
RESPONSE TO DEFENDANT MERRILL LYNCH PROFESSIONAL  
CLEARING CORP.’S MOTION TO DISMISS FOR LACK OF PERSONAL  
JURISDICTION AND “SUPPLEMENTAL MEMORANDUM  
IN FURTHER SUPPORT” OF ITS MOTION**

Without seeking leave of Court, Defendant Merrill Lynch Professional Clearing Corp. (“ML Pro”) filed a “Supplemental Memorandum in Further Support of its Motion to Dismiss for Lack of Personal Jurisdiction” attempting to explain to the Court why ML Pro failed to disclose in its original Motion, supporting Memorandum and Declaration that ML Pro is registered to do business in Georgia and has been so registered for the entire time period relevant to this case—until after the Plaintiffs pointed that fact out to ML Pro’s counsel. There is no provision in the Court’s Local Rules permitting ML Pro to submit a “supplemental

memorandum.” Plaintiffs do not object to ML Pro’s correction of the misimpression it had previously given to the Court; however, the Supplemental Memorandum also includes pages of additional argument in support of ML Pro’s Motion to Dismiss. Plaintiffs therefore request an extension of the page limitation for responding to the Motion to Dismiss in light of the fact that ML Pro’s original memorandum and supplemental memorandum collectively exceed the page limitation set forth in Local Rule 7.1.D.

In ML Pro’s original Memorandum in support of its Motion to Dismiss for Lack of Personal Jurisdiction or, in the Alternative, to Transfer (“Memorandum”) [Dkt # 59] , ML Pro argued that it had no connection to Georgia whatsoever. ML Pro stated in its Memorandum:

[T]he only allegation discussing Merrill Pro’s connection with Georgia is the vague assertion that ‘[Merrill Pro] is registered to conduct business in Georgia .... **But in fact:** [reciting statements from supporting Declaration disclaiming any connection with Georgia] ....

Memorandum at 3 (emphasis added). No where in the Motion, Memorandum or Declaration of Peter Melz submitted in support of the Motion (“Melz Declaration”) [Dkt # 59] does ML Pro reveal to the Court that, in fact, ML Pro has been registered to conduct business as a broker-dealer in the state of Georgia since 1993. In its Supplemental Memorandum, ML Pro attempts to explain:

Before filing the Motion to Dismiss [on October 26, 2010], counsel for ML Pro accessed the website for the Georgia Secretary of State to determine whether ML Pro was registered to do business in Georgia. ML Pro concluded, through counsel, that it was not so registered.

On October 27, 2010, plaintiffs' counsel contacted ML Pro's counsel and informed them that the Financial Industry Regulatory Authority's ("FINRA") "broker check report" indicated the ML Pro was registered to do business in the State of Georgia. Upon further investigation, it was determined that, although ML Pro is not registered with the **Georgia Secretary of State, Corporations Division**, it has been registered as a broker-dealer with the **Georgia Secretary of State, as Commissioner of Securities**, since October 19, 1993.

Supplemental Memorandum at 1-2 (emphasis added) (citations omitted) [Dkt # 96].<sup>1</sup>

Plaintiffs submit that there is no excuse for this oversight: It took Plaintiffs' counsel less than a day after service of the Motion to find this information and, further, ML Pro's counsel should have known that a securities broker-dealer like ML Pro would be registered with the state's Commissioner of Securities. Indeed, the very person who signed ML Pro's Declaration in support of the Motion, Mr. Melz, testified in his deposition that he was advised by ML Pro's compliance

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<sup>1</sup> Plaintiffs' counsel further pointed out to ML Pro's counsel that the "Form BD" ML Pro is required to file with FINRA also contains a provision in which ML Pro consents to jurisdiction and service of process in each state in which is registered to do business as a broker-dealer (*see id.* at 2-3), and asked ML Pro's counsel to withdraw the Motion to Dismiss on that basis. *See* Elias Nov. 12, 2010 Decl. ¶ 7. ML Pro declined the request. *Id.*

group that he, as President of ML Pro, needed to be registered to conduct business in all 50 states to do his job. Melz Dep. at 34:15-34:23 (excerpt attached as Exhibit A hereto). ML Pro has stipulated that Mr. Melz completed and submitted a FINRA “Form U4” indicating registration in all 50 states shortly after he became President in 2009. Stipulation ¶ 7b (attached as Exhibit A to Elias Nov. 12, 2010 Decl.) Thus, had ML Pro’s counsel simply asked their declarant, they would have discovered that ML Pro was in fact registered to conduct business in Georgia. But, in any event, ML Pro could and should have simply amended its original Memorandum instead of submitting an unauthorized “Supplemental Memorandum” making additional pages of argument, including two pages of string citations.

ML Pro’s Memorandum and Supplemental Memorandum in support of its Motion to Dismiss total 28 pages. Plaintiffs therefore respectfully request an additional 3 pages over the 25 page limitation, for a total of 28 pages, in which to respond to the Motion.

A proposed order is submitted with this motion.

Respectfully submitted this 3rd day of December, 2010.

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Local Rule 7.1D of the Local Rules for the District Court for the Northern District of Georgia, I hereby certify that the foregoing pleading has been prepared in Times New Roman, 14 point font, as permitted by Local Rule 5.1B.

Respectfully submitted, this 3rd day of December, 2010.

/s/ Jill A. Pryor  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this day, a true and correct copy of the foregoing  
**MOTION FOR PERMISSION TO EXCEED PAGE LIMITATIONS IN  
RESPONSE TO DEFENDANT MERRILL LYNCH PROFESSIONAL  
CLEARING CORP.'S MOTION TO DISMISS FOR LACK OF PERSONAL  
JURISDICTION AND "SUPPLEMENTAL MEMORANDUM IN FURTHER  
SUPPORT" OF ITS MOTION** was served via hand delivery and email as  
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correct copy of the foregoing via email on:



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